HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 7, 2013
83rd Legislature, Number 68
The House convenes at 10 a.m.
Part One

Sixty-nine bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the Major State, Constitutional Amendments, and General State calendars analyzed or digested in Part One of today's Daily Floor Report are listed on the following page.

Seven postponed bills — HB 3463 by Bohac, HB 3427 by Lavender, HB 3808 by Farney, et al., HB 613 by Orr and Larson, HB 953 by Button, et al., HB 887 by Lucio, et al., and HB 620 by Eiland, et al. — are on the supplemental calendar for second-reading consideration today. The analyses are available on the HRO website at www.hro.house.state.tx.us/BillAnalysis.aspx.

Bill Callegari
Chairman
83(R) – 68

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 7, 2013
83rd Legislature, Number 68
Part One

SUBJECT: Revisions to the franchise tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, N. Gonzalez, Ritter

0 nays

3 absent — Eiland, Martinez Fischer, Strama

WITNESSES: (*On introduced version:)*
For — Kathy Barber, NFIB; (*Registered, but did not testify:* George Allen, Texas Apartment Association; Les Findeisen, Texas Motor Transportation Association; Robert Flores, Texas Citizen Action Network; Stephanie Gibson, Texas Retailers Association; Chris Shields, The Greater San Antonio Chamber of Commerce, Texas Agricultural Aviation Association)

Against — None

On — (*Registered, but did not testify:* Ed Warren, Comptroller of Public Accounts)

BACKGROUND: The Texas franchise tax, or "margins" tax, applies to each taxable entity that does business or is organized in the state. The tax is calculated as 0.5 percent for taxable entities primarily engaged in retail or wholesale trade and 1 percent of taxable margin otherwise.

An entity's taxable margin is the lesser of 70 percent of the entity's total revenue, or an amount computed by either determining the entity's total business revenue using a specific method or subtracting either cost of goods sold or compensation.

Businesses with annual revenue less than $1 million currently are exempt from the franchise tax. This exemption will be lowered on January 1, 2014 to cover only those with less than $600,000 in revenue.

DIGEST: CSHB 500 would make a variety of changes to the state franchise tax. The bill would make changes to exemptions and deductions under the tax and which entities qualify for a reduced-tax rate for retail trade. It further

would exclude a number of expenses from being counted as revenue and revise costs of goods sold deductions available to businesses.

The bill would take effect January 1, 2014, and would apply to a franchise tax report after its effective date.

(*Note: Provisions from a number of bills under consideration in the 83rd Legislature appear in CSHB 500 and are labeled below*.)

EXEMPTIONS AND DEDUCTIONS

Total revenue exemption of $1 million for the franchise tax (HB 213 by Hilderbran). CSHB 500 would repeal a provision that otherwise would sunset the $1 million small business franchise tax exemption on December 31, 2013. The bill would repeal provisions in session law governing the exemption scheduled to take effect in the 2014 tax year, which is set at $600,000.

It also would repeal statutory language that establishes tax discounts for various levels of total revenue below $1 million. Current law grants the graduated discounts to entities based on total revenue.

Margin base of 65 percent. Under the bill, a taxable entity that did not subtract cost of goods sold or compensation would compute its margin based on 65 percent of its total revenue, which would be 5 percentage points lower than the current law level of 70 percent.

DEFINITION OF RETAIL TRADE

Automotive repair shops (HB 71 by Fletcher et al.). The bill would add to the definition of "retail trade" industries that fall under Industry Group 753 of the 1987 Standard Industrial Classification Manual. These would include:

- top, body, and upholstery repair shops and paint shops;
- automotive exhaust system repair shops;
- tire retreading and repair shops;
- automotive glass replacement shops;
- automotive transmission repair shops;
- general automotive repair shops; and
- automotive repair shops, not elsewhere classified.

Rental-purchase activities (HB 317 by Otto). The bill would add to the definition of "retail trade" rental-purchase agreement activities regulated by Business and Commerce Code, ch. 92.

Classification of certain rental businesses as retail (HB 510 Murphy). The bill would exempt certain businesses that fall under Industry Group 735 from the requirement that more than 50 percent of total revenue from retail activities is necessary to qualify as a retail business for franchise tax purposes. Businesses that no longer would have to meet the 50 percent threshold to qualify would include:

- medical equipment rental and leasing;
- heavy construction equipment rental and leasing; and
- equipment rental and leasing, not elsewhere classified.

EXPENSES EXCLUDED FROM TOTAL REVENUE

Payments to subcontractors (HB 2766 by Hunter). The bill would add language to specifically exclude from total revenue any payments distributed to subcontractors.

Payments for businesses that transport aggregates (HB 1733 by Hilderbran). An entity primarily engaged in transporting aggregates would exclude from total revenue subcontracting payments to nonemployee agents for the performance of delivery services on behalf of the taxable entity.

Tenant payments for taxes (HB 2775 by Branch). A landlord of commercial property would exclude from total revenue interest and depreciation received from a tenant of the property for ad valorem taxes and any tax or excise imposed on rents.

Subcontracting payments for businesses transporting barite (HB 1596 by N. Gonzalez). An entity primarily engaged in transporting barite would exclude from total revenue subcontracting payments to nonemployee agents for the performance of transportation services on the entity's behalf.

Subcontracting payments for landman services (HB 1475 by Hilderbran). An entity primarily engaged in performing landman services

would exclude from total revenue subcontracting payments to nonemployees for landman services on behalf of the taxable entity.

Physician payments for a vaccine (HB 1310 by Button). A physician's practice would exclude from total revenue the actual cost it paid for a vaccine.

Certain payments for transportation services (HB 1289 by Hilderbran). An entity engaged primarily in transporting commodities by waterways that did not subtract cost of goods sold would exclude from total revenue the cost of providing inbound or outbound transportation services by waterways to the extent that the entity would be able to subtract the costs of goods sold.

Costs to agricultural aircraft operations (HB 2451 by T. King). An agricultural aircraft operation (crop dusting) would exclude from its total revenue the cost of labor, equipment, fuel, and materials used in providing these services.

Motor carrier flow-through revenue (HB 1981 by Murphy). An entity registered as a motor carrier would exclude from its total revenue flow-through money derived from taxes and fees.

Apportionment for Internet hosting (HB 416 by Hilderbran). The bill would provide that a receipt from Internet hosting described by Tax Code, sec. 151.108 was a receipt from business done in the state only if the customer was located in the state.

COSTS OF GOODS SOLD DEDUCTIONS

Cost of goods sold for tree harvesting (HB 1432 by White). A business that primarily harvested trees for wood could subtract as cost of goods sold the direct costs of acquiring or producing the timber for the wood.

SUPPORTERS SAY:

CSHB 500 would remedy a number of ills with the franchise or "margins" tax that have been plaguing businesses for years. The bill would address a number of equity issues with the tax that have been well known but that have been allowed to continue due to the fact that addressing them comes at a price.

While there would be a significant cost for adopting CSHB 500, the state

would pay an even greater toll if industries were to leave or fold due, in part, to inequitable and unfair tax policies. These issues must be addressed now, as they put Texas businesses at a competitive disadvantage and disrupt the state's equitable and supportive business climate.

There are some strong advocates for greater changes to the structure or very existence of the franchise tax, but changes of this magnitude do not appear to be a political possibility at this time. The Legislature should not allow the perfect to be the enemy of the good. CSHB 500 would be a clear improvement over current law and practice.

EXEMPTIONS AND DEDUCTIONS

CSHB 500 indefinitely would extend the $1 million franchise tax exemption to small businesses that would be significantly impacted by a tax hike. The 81st Legislature in 2009 first temporarily adopted the $1 million exemption limit, which it raised from an original exemption of $300,000, and the 82nd Legislature in 2011 extended it through fiscal 2012-13. With the state in a fiscally stable position, the time is now to finally end the ad-hoc extensions of the small business tax exemption and set the $1 million limit in statute.

A failure to extend the $1 million exemption would be dangerous and counterproductive. Small business growth has been and continues to be a vital component of economic recovery, primarily through the generation of jobs. Small businesses also contribute directly to state coffers by paying property and sales taxes. Failing to extend the exemption would deal a major blow to small businesses that are still emerging from the recession economy. Subjecting small businesses to a higher burden would be counterproductive to goals of low unemployment, diverse economic growth, and diffused opportunity.

The bill would provide an important increase to the standard deduction (to 35 percent) that businesses can claim instead of itemizing costs of goods sold or compensation costs. This would help the large number of businesses whose operations do not fit nicely into the cost of goods sold or compensation deduction framework. Raising the standard deduction would help offset the disproportionate tax impact on businesses that fall into this category.

DEFINITION OF RETAIL TRADE

Retail trade businesses have a lower proportional burden under the franchise tax. Many businesses that are truly retail enterprises, however, are classified under a non-retail code in the 1987 Standard Industrial Classification Manual. This misclassification puts these businesses at a serious competitive disadvantage compared with competing businesses that are granted the reduced retail tax rate.

CSHB 500 would correct three well-known instances of similar businesses being taxed at different rates due to a retail trade misclassification:

- independent automotive repair shops and body shops;
- rent-to-own businesses; and
- equipment rental and leasing.

Independent automotive repair shops are taxed at a higher rate (1 percent) than automotive repair shops attached to auto dealers (.5 percent). Similarly, the rent-to-own business model is fundamentally based on selling products through a trial renting period. The primary difference lies in how the customer pays for the products. Independent equipment rental businesses directly compete with other retail businesses with rental components, such as Home Depot and Lowe's, but have to pay a higher tax rate because they do not meet the 50 percent minimum requirement for retail trade.

In each of these cases, the current application of the franchise tax creates an uneven playing field for businesses with like pursuits. Taxes must be equal and uniform, and making these changes now would be a healthy stride in that direction.

EXPENSES EXCLUDED FROM TOTAL REVENUE

Another arena in which the franchise tax falls short is in taxing businesses for what are truly expenses. Some businesses receive a large number of payments that are simply "passed-through" to contractors, subcontractors, and to other entities working for that business. It is important to construct tax law to ensure that pass-through revenue is only taxed once, and at its final destination.

CSHB 500 would make a number of amendments to the franchise tax to

ensure that businesses were not being taxed on pass-through revenue and that businesses in unique situations were not unduly burdened by tax rules. The bill would exclude from total revenue (and thus from taxation):

- payments distributed to subcontractors;
- subcontracting payments to nonemployee agents involved with transporting aggregates;
- payments from a tenant of a commercial landlord for property taxes and other taxes;
- subcontracting payments to nonemployees engaged in the transportation of barite;
- subcontracting payments to nonemployees performing landman services on behalf of an entity;
- the cost of providing inbound or outbound transportation services by waterways for commodities transporters that did not subtract cost of goods sold;
- the cost of labor, equipment, fuel, and materials used in providing crop dusting operations;
- the actual cost a physician's office paid for a vaccine; and
- money derived from taxes and fees paid to a motor carrier.

Providing for businesses in these unique situations that are disproportionately impacted by the tax would increase the overall equity and fairness of the franchise tax.

In addition, the bill would address the disproportionate tax burden on web-hosting businesses. Under the franchise tax, receipts from out-of-state customers paying for web storage in Texas are treated as business done in this state for the purposes of the apportionment formula. As such, web-hosting businesses have a higher percentage of their receipts subject to tax than other businesses with large out-of-state customer bases that are not taxed for those transactions. Exempting out-of-state customers from revenue calculations for web-hosting businesses would address this inequity.

COSTS OF GOODS SOLD DEDUCTIONS

CSHB 500 would address some issues that have arisen with the franchise tax due to the structure of the costs of goods sold deduction. The definition of costs of goods sold under the franchise tax is generally more strict than the definition used for IRS tax purposes.

The various shortcomings of the franchise tax's cost of goods definition create a disproportionate tax burden for certain industries in unique situations. CSHB 500 would correct one case in which legitimate expenses are not allowed under the cost of goods sold deduction. Specifically, the bill would allow such a deduction for the costs of acquiring or producing the timber used by a business that harvested trees for wood.

OPPONENTS SAY:

CSHB 500, according to the Legislative Budget Board, would have a negative impact of almost $400 million to the state for fiscal 2014-15. This would have a very significant, indirect impact on general revenue funds by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

The Legislature should not contemplate measures that drain funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue to the state that is not absolutely necessary should be tabled.

This bill, along with the number of amendments that members have pre-filed for floor discussion, presents strong evidence that the franchise tax is deeply flawed and in desperate need of reform. As many have noted, under the current tax, businesses are taxed on expenses that should be exempt, others pay unequal rates for similar activities, and still others have to pay taxes for years in which they actually report a net loss of income.

CSHB 500 would put a dozen bandages on a patient without addressing the underlying ailment. There are at least two proposals for comprehensive reform of the franchise tax.

One proposal would be to add a wind-down provision to the franchise tax. HB 509 by Murphy and 607 by Scott Turner, for instance, would reduce the rate of the franchise tax each year from fiscal 2014 to 2016 and finally would eliminate the tax in fiscal 2017. While this would have a significant short-term negative impact to general revenue, the long-term net gain to the state by fostering a very attractive business environment would be soundly positive.

Another proposal would be to eliminate the current franchise tax and replace it with a business profits tax. The Supreme Court recently confirmed that a tax on business profits would not violate the so-called "Bullock Amendment," which restricts taxes on a person's share of partnership and unincorporated association income. A tax on business profits, or net income, could greatly simplify the franchise tax and would end various problems and inequities created by the differential tax structure in current law.

Whatever the ultimate choice, the Legislature should look toward enduring solutions to the numerous problems that have plagued the tax.

OTHER OPPONENTS SAY:

Continuing the $1 million exemption would be problematic because it would create a sheer tax cliff at that amount: make $999,999 and pay no taxes; make $1,000,001 and pay the full percentage owed. A staggered approach with discounts for various ranges of revenue, as exists on paper in current law, would be preferable to a dollar-value cliff.

NOTES:

The Legislative Budget Board estimates that CSHB 500 would result in a loss of about $396.8 million to the Property Tax Relief Fund for fiscal 2014-15. Any loss to this fund would have to be offset with an equal amount of general revenue to fund the Foundation School Program.

House members have pre-filed a total of 33 amendments on CSHB 500 for floor consideration today.

SUBJECT: Creating district courts, county courts at law, and a magistrate's office

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Lewis, Farrar, Farney, Hernandez Luna, K. King, Raymond, S. Thompson

0 nays

2 absent — Gooden, Hunter

WITNESSES: For — None

Against — None

On —Elisabeth Earle, Travis County; Deece Eckstein, Travis County Commissioners Court; Julie Kocurek, Travis County Criminal Courts; Lora Livingston, Travis County Courts; David Slayton, Office of Court Administration; (*Registered, but did not testify:* Kasey Hoke; Warren Vavra, Travis County Courts)

BACKGROUND: District courts have original jurisdiction in all felony criminal cases, divorce cases, cases involving title to land, election contest cases, civil matters in which the amount in controversy (the amount of money or damages involved) is $200 or more, and any matters in which jurisdiction is not placed in another trial court.

The civil jurisdiction of most county courts at law varies, but is usually more than that of the justice of the peace courts and less than that of the district courts. County courts at law usually have appellate jurisdiction in cases appealed from justice of the peace and municipal courts.

Magistrates deal with pre-trial and some administrative matters. These include: setting and revoking bonds, examining trials, determining indigence and appointing counsel, issuing search and arrest warrants, issuing emergency protective orders, ordering emergency mental commitments, and conducting initial juvenile detention hearings.

DIGEST: HB 3153 would create several trial courts and would make changes to

others.

District Courts. HB 3153 would create four new district courts.

The 452nd District Court would cover Edwards, Kimble, McCulloch, Mason, and Menard counties. The bill would remove those counties from the existing 198th District Court on September 1, 2013. The bill would create a new district attorney for the court and would add this prosecutor to the professional prosecutors act.

The 442nd District Court would be created in Denton County on January 1, 2015.

The 443rd District Court would be created in Ellis County on September 1, 2014.

The 450th District Court would be created in Travis County on September 1, 2015. The court would give preference to criminal matters.

County Courts. The bill would create three new county courts at law, a statutory probate court, a multi-county county court at law, and modify the jurisdiction of another county court at law.

A county court at law in Atascosa County would be created on January 1, 2014 or on an even earlier date as determined by the county commissioner's court. In addition to the normal jurisdiction of a county court at law, it would also have jurisdiction over family law matters.

A statutory county court in Jim Wells County would be created on January 1, 2015. The bill would allow the court's judge to use an electronic recording device instead of a court reporter.

The 9th county court at law of Travis County would be created on September 1, 2015. The court would give preference to criminal law.

A statutory probate court in Cameron County would be created on January 1, 2015.

The bill would create the 1st multi-county statutory county with jurisdiction in Nolan, Fisher, and Mitchell Counties on September 1, 2013. The bill would abolish the existing Nolan County court at law. The new

court would also have family law jurisdiction. It would charge a stenographer's fee of $25 when a record is made by the court reporter.

The bill would modify the jurisdiction of the Lamar County court at law to add specific juvenile and civil jurisdiction. This change would happen on the effective date of the bill.

Magistrates. The bill would authorize a magistrate in Guadalupe County on the effective date of the bill.

Effective Date. Except as otherwise provided, HB 3153 would take effect on September 1, 2013.

SUPPORTERS SAY:

HB 3153 would create the new trial courts Texas needs to deal with caseload growth that comes with the recent and sustained increases in the state's population. The Office of Court Administration has run multi-variant studies on each of the proposed courts in the bill. Each court would address definite needs as shown by several of those factors. These courts would address filings growth and clearance rates issues in the fastest growing regions of Texas.

It is appropriate to spend money on local trial courts because they are the surest bulwark to protect the rule of law, which is critical for both personal freedom and safety and for the success of Texas' businesses and industries. It is also appropriate to expend state funds for these courts because even though their impact may be largely local, they are carrying out state laws and policies.

OPPONENTS SAY:

The state should be careful when creating long-term funding obligations which may only have a local impact. According to the fiscal note, HB 3153 would cost $472,000 over the next biennium for salaries, salary supplements, and other court support costs.

SUBJECT: Constitutional amendment to provide homestead exemption to certain vets

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Gonzalez, Ritter, Strama

0 nays

2 absent — Eiland, Martinez Fischer

WITNESSES: For — (*Registered but did not testify*: Jorge De Leon, Operation Finally Home; Louis Flores; Cheryl Johnson, Galveston County Tax Office; Scott Norman, Texas Association of Builders; Tony Privett, West Texas Home Builders Association; Daniel Vargas, Operation Finally Home)

Against — None

BACKGROUND: Texas Constitution, Art.8, sec. 1-b (j) allows the Legislature to exempt from ad valorem taxation all or part of the market value of the residence homestead of a disabled veteran who is certified as having a service-connected disability with a disability rating of 100 percent or totally disabled and provide additional eligibility requirements for the exemption.

DIGEST: HRJ 24 would propose an amendment to the Texas Constitution adding a subsection that would allow the Legislature to exempt from ad valorem taxation a percentage of the market value of the residence homestead of a disabled veteran or surviving spouse equal to the disabled veteran's percentage of disability if the residence homestead was donated by a charitable organization at no cost to the veteran.

The resolution would allow the legislature to provide additional eligibility requirements for the exemption.

The resolution would not affect whether a qualified disabled veteran was entitled to another exemption for veterans that was granted in the Constitution for which he or she may qualify.

The proposal would be presented to the voters at an election on Tuesday,

November 5, 2013. The ballot proposal would read: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization."

SUPPORTERS SAY:

HJR 24 would allow for legislation to help certain disabled veterans injured during their military service to stay in homes that were donated to them by charitable organizations. Texas home builders and charitable organizations have given homes to disabled veterans, and this resolution would allow legislation to ensure that the homes did not become a burden because the veteran could not pay the property taxes.

The exemption would help veterans who are partially disabled and given a home from a charitable organization; they would receive a property tax exemption equal to their disability rating. The homesteads of 100 percent-disabled veterans and their surviving spouses already are totally exempt under current law. But veterans with a partial disability who are given a home deserve a property tax exemption. Their service injuries may limit their job opportunities, and the tax liability on a donated home could become an expensive burden.

These donated homes are a tangible way to help a returning disabled veteran transition back to a civilian life after being injured in their military service, and this resolution would allow legislation that would seek to ensure that veterans could remain in them. Disabled veterans who have received homes have had the freedom to pursue education, find a suitable job, and start a business.

The resolution is tailored to apply only to veterans who were disabled during their military service and are recipients of a home from a charitable organization. This tax exemption would be appropriate considering what these veterans sacrificed.

OPPONENTS SAY:

HJR 24 would put Texas on the slippery slope of carving out a property tax exemption for certain groups. Singling out one group for a tax exemption, regardless of how deserving, raises issues of uniformity in taxation and could open the door for continued erosion of the tax base.

NOTES:

The Legislative Budget Board estimates that the adoption of the proposed

constitutional amendment's fiscal impact would depend on the enabling legislation.

SUBJECT: Relating to compliance with certain terms of state purchasing contracts

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 6 ayes — Harper-Brown, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

1 absent — Perry

WITNESSES: For — Thomas Kelly, Fluor Corporation

Against — None

BACKGROUND: Government Code, ch. 2155 establishes rules and procedures for state agencies to follow when purchasing goods and services. It also establishes types of contracts, such as bulk purchasing, that are permissible.

DIGEST: CSHB 3648 would require that contracts for goods and services under Government Code, ch. 2155 substantially comply with the terms in the solicitation and the terms considered in awarding the contract. This would apply to terms related to the cost of materials or labor, duration, price, schedule, and scope.

After evaluating bids in response to a contract solicitation but before a contract was awarded, a state agency's governing body would have to meet to consider any proposed material change to the contract terms. A material change would be defined as extending completion of a contract for six months or more, or increasing the contract price by10 percent or more.

The bill would take effect immediately if the bill finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. The bill would only apply to contracts with bids that were solicited on or after the bill's effective date.

SUPPORTERS SAY:

The bill would establish standards regarding substantive changes made in the time between the solicitation of bids and the final signing of a contract. This would ensure these changes were in the best interest of the state and taxpayers. Under current law, the rules governing the process are not stringent enough to guard against contract manipulation.

While large-scale projects necessitate flexibility in making adjustments to the terms and conditions of a contract, changes should not be made to such an extent that the project is vastly different from the one described in the solicitation document. When significant changes like this occur, potential bidders are discouraged from competing due to concerns that a low-ball bidder could be rewarded with a later contract renegotiation.

OPPONENTS SAY:

The bill would limit the ability of state agencies with governing boards to effectively engage in procurement. A state agency would have to wait until the next meeting of the governing board in order for a material change to a contract to be reviewed.

SUBJECT: Use of forfeited criminal assets by law enforcement, prosecutors

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody

0 nays

2 absent — Schaefer, Toth

1 present not voting — Burnam

WITNESSES: For — (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association; Steven Tays, Bexar County Criminal District Attorney's Office; Steve Nguyen

Against — (*Registered, but did not testify*: Meredith Kincaid, American Civil Liberties Union of Texas)

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: Kent Richardson, Office of the Attorney General; J. D. Robertson, Texas Rangers, Department of Public Safety)

BACKGROUND: Code of Criminal Procedure governs the forfeiture of contraband used in the commission of crimes. Art. 59.06 covers the disposition of forfeited assets and property. Under 59.06(c), if there is an agreement between the prosecutor and local law enforcement agencies, the money, securities, and proceeds from the sale of forfeited contraband must be deposited according to the terms of the agreement into one or more funds listed in the section.

One fund to which the proceeds of forfeited contraband can be deposited is a special fund in the city treasury if it is distributed to a municipal law enforcement agency for law enforcement purposes, "such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies and items used by officers in direct law enforcement duties."

Under 59.06(c-1), prosecutors and special rangers of the Southwestern Cattle Raisers Association can enter into agreements that allow the prosecutor to transfer forfeiture proceeds to a fund for the special rangers. It must be used for law enforcement purposes, "such as training, essential equipment, and operating equipment."

Sec. 59.06(c)(1) allows proceeds to be deposited in the county treasury for the benefit of the local prosecutor's office, to be used by the prosecutor solely for the purposes of the office.

DIGEST:

CSHB 1849 would eliminate the list of items designated as "law enforcement purposes" for which law enforcement agencies and special rangers are authorized to use the proceeds of forfeited contraband under Code of Criminal Procedure, art. 59.06(c)(2) and (c-1).

The bill would establish that expenditures of proceeds or property would be considered to be for law enforcement purposes if they were made for an activity of a law enforcement agency that related to criminal and civil law enforcement, including expenditures made for:

- salaries and overtime;
- equipment;
- supplies;
- investigative and training-related travel;
- conference and training expenses;
- investigative costs;
- crime prevention and treatment programs;
- facility costs;
- witness-related costs; and
- audit costs and fees.

CSHB 1849 would establish that expenditures of proceeds or property would be considered to be for the official purpose of a prosecutor's office if they were made for an activity of a prosecutor or office of a prosecutor that related to the preservation, enforcement, or administration of law, including expenditures made for:

- salary and overtime;
- equipment; supplies;
- prosecution and training-related travel expenses;

- conferences and training;
- investigative costs;
- crime prevention and treatment;
- facilities costs;
- legal fees; and
- state bar and legal association dues.

For both of these lists, the bill would include examples in many of these categories.

The bill would take effect September 1, 2013, and would apply to the disposition or use, on or after that date, of proceeds or property, regardless of when the receipt of the proceeds occurred.

SUPPORTERS SAY:

CSHB 1849 would help clear up confusion and address abuses of the use of proceeds from criminal asset forfeitures. While current law prohibits certain uses of these funds, it does not contain adequate guidance on what is permitted. The problems with current law have led to a string of abuses, such as the use of proceeds for trips to Hawaii and personal vehicles.

The bill would address this problem by establishing the broad purpose for which these funds could be used and listing categories and examples of acceptable uses. This would give law enforcement agencies, prosecutors, and the public guidance about what was an authorized use of asset forfeiture proceeds and property. Such a list would improve uniformity, oversight, transparency, and accountability of the use of these forfeited assets.

CSHB 1849 would not establish an exclusive list of approved expenditures so as to give law enforcement agencies and prosecutors the necessary flexibility in handling these proceeds and property. Although the bill would allow for flexibility in expenditures, all expenditures — whether on the list or not — would have to meet the broad governing principles that they are for activities of law enforcement agencies related to criminal and civil law enforcement and activities of prosecutors related to the preservation, enforcement, or administration of law. This would give guidance and set parameters for individual acceptable expenditures.

OPPONENTS SAY:

It would be best to establish a closed list of acceptable expenditures, rather than an open-ended list, to ensure that all expenditures were closely tied to law enforcement or prosecutorial activities. This would remove

uncertainty about expenditures not listed in the bill and ensure that expenditures were uniform statewide.

OTHER OPPONENTS SAY:

It would be inappropriate to allow forfeited assets to be used as payments to informants. The use of paid informants has been questioned in the past, and should not be supported through these funds.

SUBJECT: Funding the Texas Rail Relocation and Improvement Fund

COMMITTEE: Transportation — committee substitute recommended

VOTE: **(*On committee substitute :*)**
7 ayes — Phillips, Martinez, Fletcher, Guerra, Harper-Brown, McClendon, Riddle

0 nays

4 absent — Burkett, Y. Davis, Lavender, Pickett

WITNESSES: **(*On committee substitute:*)**
For — Maureen Crocker, Gulf Coast Rail District; Peter LeCody, Texas Rail Advocates; Eddie Miranda, Greater Houston Partnership; Kim Porterfield, City of San Marcos; Bruce Todd, Rail Relo Now; (*Registering, but not testifying:* William Bingham, Lone Star Rail District; Victor Boyer, San Antonio Mobility Coalition Inc.; Max Jones, Metro 8 Chambers of Commerce; Luis Saenz, City of San Antonio; Chris Shields, Greater San Antonio Chamber of Commerce)

Against — None

On — (*Registering, but not testifying:* James Bass, Texas Department of Transportation)

BACKGROUND: In 2005, Texas voters approved a constitutional amendment authorizing the creation of the Texas Rail Relocation and Improvement Fund within the state treasury. The amendment allowed the Texas Transportation Commission to administer a revolving fund to fund the relocation and improvement of privately and publicly owned passenger and freight rail facilities.

In 2001, the 77th Legislature enacted SB 5 by Brown to create the Texas Emissions Reduction Plan (TERP), a set of incentive-based programs intended to reduce ozone-producing emissions. Funds for the TERP account come from seven sources:

- certain fees from motor vehicle title certificates under sec. 501.138,

Transportation Code;

- emissions offsets paid by site owners/operators in the Houston-Galveston and the Dallas-Fort Worth nonattainment areas under Health and Safety Code, sec. 386.056;
- surcharges on heavy-duty diesel equipment under Tax Code, sec. 151.0515;
- surcharges on retail sale, lease, or use of on-road diesel motor vehicles, except recreational vehicles under Tax Code, sec. 152.0215;
- a surcharge on registration of truck-tractor or commercial motor vehicles under Transportation Code, sec. 502.358;
- an inspection fee on certain commercial motor vehicles under Transportation Code, sec. 548.5055; and
- grant funds under Transportation Code, sec. 502.358 and sec. 548.5055.

DIGEST:

(Digest reflects bill as amended by the author's intended floor amendment:)

CSHB 1878 as amended would reallocate a portion of the motor vehicle certificate of title fees charged motorists in nonattainment areas of the state and certain state highway funds from TERP to the Texas Rail Relocation and Improvement Fund. Under the bill, of the $33 paid by motorists of counties in a federal Clean Air Act nonattainment area or with deteriorating air quality $5 would go to the Texas Rail Relocation and Improvement Fund instead of the TERP fund.

CSHB 1878 as amended would require the comptroller to monitor transfers to and from the Texas emissions reduction plan fund and make determinations to manage the fund as directed.

Under the bill as amended, if the Texas Commission on Environmental Quality (TCEQ) found after a public hearing that certain nondedicated state highway funds up to the amount of certain other noncontainment feeds deposited to the Texas Mobility Fund could be used at least as effectively for congestion mitigation projects as they would have been used by the TERP, TCEQ could designate these funds to be used for congestion mitigation projects or for use by the Texas Rail Relocation and Improvement Fund.

TCEQ would have to notify the Texas Transportation Commission of its findings under the public hearing. If the hearing did not find that the funds

could be used at least as well outside of TERP, the remaining state highway funds would be deposited to the credit of TERP. The bill would require TCEQ to adopt criteria for making a finding through the public hearing.

Money deposited to the Texas Rail Relocation and Improvement Fund could be used to fund an infrastructure project to reduce air pollution and relieve congestion through rail relocation or improvement. This would include an infrastructure project under Health and Safety Code, sec. 386.109(a)(4), which would reduce air pollution and engine idling by relieving congestion through rail relocation or improvement at a rail intersection that was located in a nonattainment or near nonattainment area.

The bill would remove the September 1, 2008 — September 1, 2015 constraint governing deposit of $5 of the certificate of title nonattainment fees. The bill would also repeal the August 31, 2019 expiration date relating to amounts allocated from the State Highway Fund.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1878, as amended, would not involve any new or increased fees but would allow certain certificate of title funds already received to be reallocated to the rail relocation and improvement fund. The bill would simply allow TCEQ to work with TxDOT to use TERP funds for TERP purposes, which broadly speaking include using railroad projects to relieve traffic congestion and limit pollution. For reallocation of certain state highway funds, the bill would require TCEQ to establish through a public hearing that the rail relocation and improvement fund could use the fees at least as well as TERP. The author plans to introduce an amendment to align HB 1878 with provisions in HB 7 by Darby governing allocation of nonattainment title fees.

The bill would not significantly reduce funding to TERP, which has six other sources of funding other than title fees. The bill would also specify that the portion of the fee transferred from TERP would still be used to reduce air pollution and relieve congestion. The bill would not expand the scope of funding for rail projects, as Health and Safety Code already identifies certain rail projects as eligible for TERP funding.

The bill would enhance the state's ability to make applications for federal

funding that the state will need in the future to improve the rail network, reduce congestion, and help the state's rail and roadways become safer, less polluted, and more efficient. The bill would also help the state to continue to be economically competitive, build jobs, and move cargo efficiently to and from ports. The state needs to act now to improve and relocate rail before the 2015 expansion of the Panama Canal drives significantly more rail and roadway traffic through the state.

Under current law, TCEQ cannot obtain the optimal value of its funds under TERP because TCEQ has no bonding authority. CSHB 1878 would allow TCEQ to work with TxDOT to optimize the funds available for TERP purposes.

OPPONENTS SAY:

The bill would take valuable and needed funds away from the Texas emissions reduction plan fund without replacing them.

The bill would also make the fund bondable, which could increase the state's transportation debt. The bill would not create a sustainable source of funding for transportation before allowing the state to enter into even more debt to fund transportation.

NOTES:

CSHB 1878 has no fiscal impact through the biennium ending August 31, 2015, according to the Legislative Budget Board.

The bill would redirect $5 in motor vehicle title certificate fees from the General Revenue account 5071 Emissions Reduction Plan to the Texas Rail Relocation and Improvement Fund 0306 beginning in fiscal year 2014. The dedication of revenues received from motor vehicle certificates to General Revenue Account 5071 Emissions Reduction Plan would expire under current law at the end of fiscal year 2015 and are scheduled to be deposited to the credit of the Texas Mobility Fund 0365.

SUBJECT: Creating a commission to study unclaimed land grant mineral proceeds

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Deshotel, Frank, Goldman, Herrero, Paddie, Simpson, Springer

0 nays

2 absent — Walle, Parker

WITNESSES: For — Al Cisneros; Hector Uribe; (*Registered, but did not testify*: Benita Castillo; Amado Garza; Mary Garza; Hilda Velasquez)

Against — None

BACKGROUND: In Texas, after a dormancy period, unclaimed property is turned over to the comptroller's office, which attempts to locate the rightful owner. Unclaimed monies are deposited into the General Revenue Fund and returned to the owner when located. Property is declared unclaimed after a set dormancy period, which begins after the last act of ownership. This is usually defined as the owner's last transaction or communication with the property holder. In January 1986, unclaimed mineral royalties in Texas began to be turned over to the comptroller.

According to the General Land Office, the governments of Spain and Mexico awarded about 26 million acres of land in what is now Texas in specific grants during the 16th and 17th centuries. In total, Texas contains about 172 million acres of land.

DIGEST: CSHB 724 would establish the Unclaimed Minerals Proceed Commission to study and provide recommendation to the Legislature regarding the distribution of mineral proceeds that are derived from an original land grant, owned by a decedent of an original grantee, and unclaimed and presumed abandoned unclaimed property that has been delivered to the Comptroller of Public Accounts.

The commission would determine the amount of the original land mineral proceeds delivered to the comptroller that remain unclaimed on December 1, 2014, and an efficient and effective procedures through which the state

could determine, notify, and distribute the proceeds.

The 17-member commission would comprise three members who represent grant heirs and three members who have expertise in property law appointed by the governor; two members appointed by the lieutenant governor; two members appointed by the speaker of the house; two members appointed by the land commissioner; two members appointed by the comptroller; two members appointed by the executive director of the Texas Historical Commission; and the state historian or designee. The governor would appoint the commission's presiding officer.

CSHB 724 would require the governor, lieutenant governor, and the speaker of the house of representatives to make appointments by December 31, 2013.

The bill would establish the timeframe for the first meeting and meet regularly as called by the chairman. Commission members would not be entitled to reimbursement for expenses or compensation.

The commission would have to prepare a report, no later than January 1, 2015, and provide the report to governor, lieutenant govern and speaker of the House of Representatives.

The report would be required to specify the amount of unclaimed original land grant mineral proceeds delivered to the comptroller by December 1, 2014, and recommendations for efficient and effective ways to determine, notify, and distribute the proceeds to the owners.

CSHB 724 would require the commission to recommend legislation necessary to implement the final report, as well as any administrative recommendations and a complete explanation of each of the commission's recommendations.

The commission would not be subject to Government Code, ch. 2110, the statute governing the operation of state advisory committees. The commission would expire on June 1, 2015.

The bill would be effective on September 1, 2013.

SUPPORTERS SAY:

CSHB 724 would establish a study so the Legislature could determine the best method to distribute unclaimed mineral royalties to the descendants of

Spanish and Mexican land grant recipients. This would be an important step toward providing finality to the potential heirs of the unclaimed mineral rights.

The commission that would be established by CSHB 724, working with oil and gas companies, genealogists, and others, would be fully capable of providing finality to this issue.

Since 1986, oil and gas companies have sent royalty payments to the comptroller when they were unable to locate the rightful owners. The companies often are unable to determine who the heirs were or where they lived. More often than not in these situations, the rightful owners died without specifying their heirs in their wills. The comptroller holds these funds in trust for the unknown owners. Up to 95 percent of the unclaimed mineral royalties contain some kind of information on the true owners, but it is often insufficient to identify, let alone locate, them. Sometimes the royalty payments even lack information on the well head from which they were generated. Absent a study, recommendation, and proposal for change in law, these funds likely will never be distributed.

Descendants of Spanish and Mexican land grantees are likely the proper recipients of the state's unclaimed mineral royalties because these descendants still own significant portions of the mineral rights of the original land grants.

The commission would make a limited determination aimed addressing a narrow, but ongoing problem. It would not be the first step in undoing existing property rights.

OPPONENTS SAY:

Existing law provides the mechanism by which individuals having unclaimed property can provide proof to the comptroller. The commission and the resulting study could establish a belief among some that they should expect to a payment from the comptroller, when none will be forthcoming.

The commission might not be able to complete the task because the comptroller does not receive with unclaimed mineral royalties information about county of production or other geographic location, making it nearly impossible for the comptroller to undertake such a study. Such determinations would have to be made by the oil and gas production companies, which would be a challenge for them because of the large

amount of turnover in the oil and gas leases.

The amount of money that the comptroller is unable to attribute to a land grant mineral right that has gone unclaimed property is relatively small — about $500,000. The costs of determining the ownership of that money, especially given the size of the commission and the agency staff time used to staff the commission, may not be enough to justify the commission's existence.

Although just a study, the bill could be the first step in undoing longstanding property laws to benefit a small number of individuals who have had nothing to do with land for more than 100 years.

SUBJECT: Infrastructure improvement by certain development corporations

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Anchia, Elkins, J. Rodriguez

0 nays

2 absent — Leach, Sanford

WITNESSES: For — None

Against — Carlton Schwab, Texas Economic Development Council

BACKGROUND: Local Government Code, sec. 501.006, allows an economic development corporation (EDC) to issue bonds to finance certain projects on behalf of the municipality that created it.

Local Government Code, sec. 501.103, allows local EDCs to fund projects for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:

- streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;
- telecommunications and internet improvements; or
- beach remediation along the Gulf of Mexico.

DIGEST: HB 1966 would allow the EDC authorized by the municipality described in the bill (Port Arthur) to fund projects for infrastructure improvements necessary to develop and revitalize areas in the municipality, including:

- streets and roads, rail spurs, water and sewer utilities, electric utilities, gas utilities, drainage, site improvements, and related improvements;
- telecommunications, data, or Internet improvements; and
- facilities designed to remediate, mitigate, or control erosion, including coastal erosion along the Gulf of Mexico or the Gulf

Intracoastal Waterway.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1966 would broaden the ability of the Port Arthur EDC to fund specific projects to boost economic development if those specific projects needed infrastructure work. Under current law, the Port Arthur EDC is not allowed to use its funds for general infrastructure projects. The bill would enable the Port Arthur EDC to use the funds it already has to finance specific infrastructure projects.

The bill would not create a slippery slope because every expansion of the economic development laws would need legislative approval. If a proposed expansion were inappropriate, the Legislature could reject it.

HB 1966 would not require the Port Arthur EDC to fund infrastructure improvements. It only would grant it flexibility to do so where the economic return made sense.

OPPONENTS SAY:

HB 1966 is not needed. The Port Arthur EDC already may fund infrastructure improvements under current law.

It would be inappropriate to create specific carve outs in economic development law because it would place some Texas localities on unequal footing with others. It is better to have robust, generally applicable economic development laws that allow all of Texas to better compete globally and with other states.

SUBJECT: Requiring a certain language for a written statement made by the accused

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Carter, Burnam, Canales, Hughes, Moody

1 nay — Schaefer

2 absent — Leach, Toth

WITNESSES: For — William Cox, El Paso County Public Defender's Office; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Marisa Bono, MALDEF; Cindy Eigler, Texas Interfaith Center for Public Policy; Brian Eppes, Tarrant County District Attorney's Office; Kristin Etter, Texas Criminal Defense Lawyers Association; Kathryn Kase, Texas Defender Service; Travis Leete, The Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Bill Shier; Celeste Villarreal, Mexican American Bar Association of Texas; Justin Wood, Harris County District Attorney's Office)

Against — None

On — Steven Tays, Bexar County Criminal District Attorney's Office; (*Registered, but did not testify:* J D Robertson, Texas Rangers, Department of Public Safety)

BACKGROUND: Code of Criminal Procedure, art. 38.22, sec. 1 requires that a written statement made by the accused be made in his or her own handwriting or, if the accused is unable to write, that a statement bear the mark of the accused and that the mark be witnessed by someone other than a peace officer.

DIGEST: HB 2090 would require a written statement made by the accused to be made in a language the accused could read and understand, if the statement was not made by the accused in his or her own handwriting. Such a statement would have to be signed by the accused or bear the mark of the accused, witnessed by a person other than a peace officer, if the accused was unable to write.

HB 2090 would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2090 would establish a sensible procedure to ensure the integrity of the judicial system by requiring that the accused be able read and understand the written statement the person signs. Currently, it is possible that a non-English speaker could sign a written statement in English without understanding the content of the statement.

This could put important evidence in doubt or could be used wrongfully as evidence in a case. In some instances in Texas, a statement signed by an accused person who did not understand the statement has been used against the accused in trial. This inaccuracy can undermine the criminal justice system. HB 2090 would promote fundamental fairness by simply requiring that the accused be able to read and understand their statements.

OPPONENTS SAY:

HB 2090 should require that the written statement be made in a language of which the accused displays an understanding , instead of a language the accused can read and understand. By requiring the ability to read and understand, an accused person who could not read in any language would be unable to provide a statement.

Additionally, the current language in HB 2090 could lead to uncertainty because it is difficult to prove that someone understands and can read a language. There would be no safeguards to prevent a defendant from falsely claiming that he or she was unable to understand or read the statement after having signed it.

SUBJECT: Increasing certain courses offered in the career and technology curriculum

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 7 ayes — J. Davis, Vo, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

2 absent — Bell, Y. Davis

WITNESSES: For — Vernagene Mott, Texas Association of School Boards and Pflugerville Independent School District; (*Registered, but did not testify:* Ellen Arnold, Texas Association of Goodwills, Texas Parent Teacher Association; Jon Fisher, Associated Builders and Contractors of Texas; Ken McCraw, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Ned Munoz, Texas Association of Builders; Daniel Womack, Texas Chemical Council)

Against — None

BACKGROUND: Career and technology programs can provide students with industry certification and expand the number of opportunities for students who do not pursue a traditional four-year college program. Many licensure certificates are accessible to high school students, who can receive training and instruction on a trade and take a certification exam.

DIGEST: CSHB 2201 would amend Education Code, ch. 28, to require the State Board of Education to approve at least three more advanced career and technology education courses that would satisfy a fourth credit in mathematics that is currently required for high school graduation. The courses must be approved by September 1, 2014.

The commissioner of education would be required by January 1, 2015 to give a report on the progress of the additional career and technology courses to the governor, lieutenant governor, speaker of the House, and the presiding officers of each committee in the Legislature tasked with overseeing public education. The requirements in the bill would expire September 1, 2015.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2201 would provide the state's public school system with much-needed math courses that give career and technology students practical real-world value. Adding the courses would provide more flexibility within the state's curriculum and would not be difficult to implement.

Currently, the state offers three career and technology courses that satisfy the required fourth credit in mathematics. The bill would ensure the addition of at least three more of these courses. This expansion of the curriculum is critical in helping prepare for the workforce those high school students who do not plan to pursue a post-secondary education. Many of the state's rapidly growing employment fields are in technical fields so the bill would help satisfy this demand.

Creating and implementing the courses would not be difficult as the Texas Education Agency is already in the process of developing two such career and technology courses and a third course is not far off. This process includes input from educators. Also, a study by the Legislative Budget Board shows there would be no significant impact from the bill.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Requiring authorization to engage in animal disease control programs

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — T. King, Anderson, M. González, Kacal, Kleinschmidt, Springer, White

0 nays

WITNESSES: For — Elizabeth Choate, Texas Veterinary Medical Association; *(Registered, but did not testify:* Darren Turley, Texas Association of Dairymen*)*

On — *(Registered, but did not testify:* Dee Ellis, Texas Animal Health Commission*)*

Against — None

BACKGROUND: The Texas Animal Health Commission's current statutory authority for the authorization of individuals performing animal disease control activities is limited to brucellosis.

Current agency disease control programs include brucellosis, bovine tuberculosis, trichomoniasis, cervid tuberculosis, contagious equine metritis, equine piroplasmosis and chronic wasting disease.

DIGEST: HB 3569 would amend Agriculture Code, ch. 161 by adding a section relating to authorized personnel for disease control that would require persons performing animal disease control activities to be authorized, by rule, by the Texas Animal Health Commission (TAHC). The TAHC would be required to adopt the rules by December 1, 2013.

After reasonable notice, TAHC could suspend or revoke a person's authorization if it was determined the person had substantially failed to comply with the requirements.

The bill also would provide for the issuance of electronically issued certificates of veterinary inspection.

HB 3569 would take effect September 1, 2013.

SUPPORTERS SAY:

The Texas Animal Health Commission's current statutory authority for the authorization of individuals performing animal disease control activities for the commission is limited to brucellosis. However, current agency disease control programs include brucellosis, bovine tuberculosis, trichomoniasis, cervid tuberculosis, contagious equine metritis, equine piroplasmosis and chronic wasting disease.

HB 3569 would broaden the statutory authority of the TAHC to allow the agency to develop certification and training programs for all disease programs, not just brucellosis. The bill also would help with quality control over the tests, samples, and inspections performed for other animal diseases.

OPPONENTS SAY:

HB 3569 would create an ongoing expense for TAHC of maintaining the data of persons authorized to participate in disease control and eradication, requiring additional personnel. This would result in a yearly cost to general revenue $86,691 in salaries and benefits.

SUBJECT: Prohibiting named-driver auto insurance policies

COMMITTEE: Insurance — committee substitute recommended

VOTE: 5 ayes — Smithee, Eiland, G. Bonnen, Muñoz, C. Turner

3 nays — Creighton, Sheets, Taylor

1 absent — Morrison

WITNESSES: For — Brent Rhodes; (*Registered, but did not testify:* Robert Blankenship; Nathan Castro, Bill Chapman Auto Sales; Greg Chapman; Steve Chapman; Wendy Chapman; Mark Fish; Bonnie Keller; Kanton Labaj, Third Coast Auto Group; Jeff Martin, Texas Independent Automobile Dealers Association; Brad Parker, Texas Trial Lawyers Association; Margie Villela, Kyle Chapman Motor Sales; Ware Wendell, Texas Watch)

Against — Lee Loftis, Independent Insurance Agents of Texas; Jay Thompson, Association of Fire and Casualty Companies in Texas; Joe Woods, Property Casualty Insurers Association of America; (*Registered, but did not testify*: Greg Hooser, Texas Surplus Lines Association)

On — Leslie Hurley, Texas Department of Insurance

BACKGROUND: Since 2004, the Texas Department of Insurance (TDI) has approved "named-driver" personal automobile insurance policies that cover drivers who are not members of the policyholder's household but have permission to drive the insured vehicle.

TDI also approves a comparable type of automobile policy known as a "named-driver exclusion" policy, which generally provides coverage to all drivers except those specifically excluded by name on the policy.

DIGEST: CSHB 1773 would prohibit an insurer from issuing or renewing a named-driver policy. An insurer would be permitted to issue a named-driver exclusion policy if each excluded driver were specifically named.

The bill would apply to any insurer writing automobile insurance in Texas, including a county mutual insurance company.

CSHB 1773 would take effect September 1, 2013. It would apply only to insurance policies delivered or renewed on or after January 1, 2014.

SUPPORTERS SAY:

CSHB 1773 would protect public safety by prohibiting a faulty insurance product. Named-driver policies allow for uninsured household members of a policyholder to knowingly or unknowingly drive without coverage, putting other drivers as well as a vehicle's creditors at risk. TDI has noted the confusion these policies produce because they create coverage gaps for household members whom drivers often assume are covered.

The bill would increase personal responsibility and transparency in the marketplace. By eliminating an ambiguous coverage option, consumers would know more clearly the policy they were buying and whether certain drivers had coverage or not.

Concerns that the bill would increase the number of uninsured drivers are overstated. Named-driver policies make up less than 7 percent of the auto insurance market, and while they may increase access to insurance for some, they create a much larger cost to citizens involved in accidents with uninsured drivers and to insured drivers who pay higher premiums through uninsured and underinsured motorist coverage. Personal automobile insurance should be meaningful to other drivers on the road, and those who cannot afford it should use other means of transportation.

CSHB 1773 would not require that everyone purchase a standard auto policy. Insurance carriers still would be able to offer customized coverage as long as they excluded specific drivers and not a broad class of drivers. Excluding specific drivers puts policyholders on better notice and improves safety on Texas roads.

OPPONENTS SAY:

CSHB 1773 would increase the number of uninsured motorists, making our roads less safe and imposing heavier financial costs on all Texans.

Named-driver auto insurance serves a market for low-income households who need minimum auto liability coverage. While these policies may not be ideal, eliminating them would price low-income individuals out of the auto insurance market altogether. In 2012, 1.2 million vehicles were insured by named-driver policies. CSHB 1773 would get rid of a part of the insurance industry and lead most of those with named-driver policies to become uninsured.

SUBJECT: Counting the number of student absences for truancy purposes

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Aycock, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

1 nay — Allen

1 absent — Dutton

WITNESSES: For — Gabriel Quintanilla, City of San Antonio; (*Registered, but did not testify:* Monty Exter, The Association of Texas Professional Educators)

Against — Debra Liva; (*Registered, but did not testify:* Yannis Banks, Texas NAACP)

On — (*Registered, but did not testify:* David Anderson and Lisa Dawn-Fisher, Texas Education Agency)

BACKGROUND: Education Code, sec. 25.094 allows students between the ages of 12 and 17 who are required to attend school to be ticketed for truancy if they fail to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

DIGEST: HB 2872 would amend the calculation of number of absences to five or more days or parts of days within a semester. Students attending a year-round school would commit an offense if they failed to attend on 10 or more days or parts of days within a six-month period in the same school year or three or more days or parts of days in a four-week period.

Notice to parents would be adjusted accordingly. School districts would be required to file a truancy complaint or refer the student to juvenile court not later than January 15th for absences occurring in the fall semester or June 15th for absences in the spring semester. Districts operating a year-round school would be required to file a complaint or refer the student to juvenile court within 10 school days after the student's 10th absence.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply beginning with the 2013-14 school year.

SUPPORTERS SAY:

HB 2872 would promote early intervention by lowering the trigger districts may use to issue class C misdemeanor tickets to truant students. Districts would not have to issue the tickets but could take the opportunity to find out early why a student was skipping school and take steps to address the issue.

Truant students and their parents could benefit from being referred to court after five consecutive absences in a semester. Some courts offer truancy prevention services that could be useful if delivered early. Addressing truancy before it became a chronic problem could result in students receiving fewer referrals to court. Judicial intervention could help discover why a student was missing school, such as in one case where the court was able to help a student who was depressed after a parent's death.

The current system is not working. Courts that handle truancy cases are backlogged. The complexity of tracking individual student absences and maintaining individual action deadlines for each student complicates efforts to timely and effectively address truancy and exacerbates the court backlog. These problems contribute to delayed and ineffective prevention and intervention.

HB 2872 would streamline the process for tracking absences and filing truancy actions. The bill would set two filing deadlines, one for each semester, to create a more orderly system for districts and the courts.

Truancy limits students' educational opportunities, increases the likelihood of students engaging in harmful behavior, and reduces the amount of funding that local school districts receive through the school finance system.

OPPONENTS SAY:

Too many students are being referred to the court system for discretionary disciplinary referrals, such as failing to attend school. HB 2872 would exacerbate the problem by allowing referrals after only five days in a semester, instead of the 10 days under current law.

Criminalizing student misbehavior can lead to students dropping out of

school and increase their risk of incarceration, often culminating in the so-called “school-to-prison pipeline.” The Legislature should make it more difficult, not easier, for districts to refer students to court.

Districts could incur costs to modify locally or vendor-developed student information systems to incorporate the changes in absences. The Legislative Budget Board said costs would vary from district to district depending on the system being used and the amount of modification required.

SUBJECT: Allowing justice courts as designated venue for some school offenses

COMMITTEE: Criminal Procedure Reform, Select — favorable, without amendment

VOTE: 3 ayes — Riddle, Carter, Moody

0 nays

2 absent — Herrero, Parker

WITNESSES: For — (*Registered, but did not testify*: Ballard C. Shapleigh, 34th District Attorney Jaime Esparza; Steven Tays, Bexar County Criminal District Attorney's Office)

Against — None

BACKGROUND: Education Code, sec. 25.094, establishes as an offense a student's failure to attend school and provides adjudication procedures. It allows an offense to be prosecuted in a constitutional county court, a justice court, or a municipal court in the county or municipality where the student resides or the school is located.

DIGEST: HB 1021 would allow a complaint against a student for the failure to attend school to be prosecuted in a designated justice court. If there were no designated justice court, the case could be prosecuted in any justice court in the county where the student resided or the school was located. The bill would apply to offenses committed on or after September 1, 2013.

The bill would take effect on September 1, 2013.

SUBJECT: Justice courts as venue for some complaints against parents

COMMITTEE: Criminal Procedure Reform, Select — favorable, without amendment

VOTE: 3 ayes — Riddle, Carter, Moody

0 nays

2 absent — Herrero, Parker

WITNESSES: For — (*Registered, but did not testify*: Ballard C. Shapleigh, 34th District Attorney Jaime Esparza; Steven Tays, Bexar County Criminal District Attorney's Office)

Against — None

BACKGROUND: Education Code, sec. 25.093, establishes as an offense a parent's criminally negligent failure to require a child to attend school as required by law and provides adjudication procedures. It allows a complaint to be filed in a constitutional county court, a justice court, or a municipal court in the county where the parent resides or the school is located.

DIGEST: HB 1022 would allow a complaint against a parent for the failure to require a child to attend school to be filed in a designated justice court. If there were no designated justice court, the case could be prosecuted in any justice court in the county where the parent resided county or the school was located. The bill would apply to offenses committed on or after September 1, 2013.

The bill would take effect on September 1, 2013.

SUBJECT: Texas High Performance Schools Consortium

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, J. Ratliff, Rodriguez, Villarreal

0 nays

WITNESSES: For — Kim Alexander, Roscoe ISD; Kim Caston, Texas Association of School Boards; Michael McFarland, Lancaster ISD; James Ponce, McAllen ISD; Jeff Turner, Coppell ISD; (*Registered, but did not testify:* Angie Anderson, Klein ISD; David D. Anderson, Fast Growth School Coalition; Ellen Arnold, Texas PTA; Jay Barksdale, Dallas Regional Chamber; Robert Bayard, Clear Creek ISD; Jennifer Bergland, Texas Computer Education Association; Brandon Core, Anderson-Shiro CISD; Nelson Coulter, Guthrie CISD; Amy Dankel, McKinney ISD; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Monty Exter, The Association of Texas Professional Educators; Matthew Geske, Fort Worth Chamber of Commerce; Michael Gilbert, White Oak ISD; Jan Kennedy, McKinney ISD; Dineen Majcher, TAMSA; Ken McCraw, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Ann McMullan, Klein ISD; Ted Melina Raab, Texas AFT; Wayne Rotan, Glen Rose ISD; Stewart Snider, League of Women Voters of Texas; Mark Terry; Maria Whitsett, Texas School Alliance; Trisha Windham, Dallas Regional Chamber; Howell Wright, Texas Association of Mid Size Schools; Geoff Wurzel, TechNet)

Against — Zenobia Joseph

On — Drew Scheberle, Greater Austin Chamber of Commerce (*Registered, but did not testify:* David Anderson, Criss Cloudt, Shannon Housson, and Linda Roska, Texas Education Agency; Priscilla Aquino Garza, Educate Texas)

BACKGROUND: The 82nd Legislature in 2011 enacted SB 1557 by Carona to create the High Performance Schools Consortium to develop innovative, next-generation learning standards, assessments, and accountability systems. The law requires the education commissioner to create a consortium that

reflects the state's diversity in district size and type, as well as student demographics.

In September 2012, the education commissioner invited 23 school districts to participate. The consortium in December 2012 provided a report that identified statutory changes to allow consortium districts the ability to innovate.

DIGEST:

CSHB 2824 would change Education Code provisions on teaching, assessments, and accountability for participant districts and campuses.

The bill would define "participant campus" and "participant district" and make conforming changes. It would add the State Board of Education to the list of policymakers who would get consortium reports. The bill would allow participant districts to add one or more campuses to the consortium, with education commissioner approval.

Consortium campuses could participate in the optional flexible school day program, which is currently available for campuses implementing innovative redesigns.

The bill would authorize the education commissioner to charge a fee to participating districts or open-enrollment charter schools for use of state-provided assessment items or other costs associated with administering the consortium.

At least annually, the school board or governing body of each participant district or charter school would hold a public hearing to discuss the consortium work and provide for parental and community input.

CSHB 2824 would focus on teaching "readiness" standards, defined as the standards identified by the Texas Education Agency (TEA) as essential for success.

Testing and accountability. The bill would make the following changes to assessment and accountability measures in the 2013-14 school year:

- Consortium campuses would be evaluated by an independent third party on readiness standards to allow teaching with depth, and on disaggregated data by student group with emphasis on closing achievement gaps;

- TEA evaluations would be on a report-only basis and not to rate districts and schools;
- in grades 3-8, State of Texas Assessments of Academic Readiness (STAAR) exams would be administered in math, reading, and science;
- districts would be allowed to use national college preparatory tests in grade 8; and
- districts would be allowed to administer fewer assessments than required by federal law if allowed by a waiver; and
- 10th grade students enrolled in English, mathematics, and science could take STAAR end-of-course exams or nationally norm-referenced tests such as the SAT if allowed by federal law.

Beginning with the 2014-15 school year or as soon as possible following receipt of a waiver from federal testing requirements, the following provisions would apply:

- STAAR exams would be limited to reading in grade 3, mathematics in grade 4, science in grade 5, reading in grade 6, and mathematics in grade 7;
- In prekindergarten through 12th grade, districts could administer locally approved or developed assessments aligned to readiness or high-priority learning standards;
- TEA evaluation would be on a report-only basis;
- Districts could administer national college preparatory assessments in grades 8, 10, 11, and 12;
- Participant campuses would be evaluated on community-established measures that include academic achievement and college-and career-readiness.

The bill would make testing provisions for students in a special education programs and students of limited English proficiency. High school students who moved to a non-consortium district could take alternative assessments.

The bill also would exempt end-of-course exam requirements for consortium students who demonstrated satisfactory performance on advanced placement tests, international baccalaureate exams, the PSAT, and other national testing instruments.

Reporting requirements. The consortium report due December 1, 2014

would include:

- an update on the effectiveness with which participant campuses are closing gaps in achievement on readiness standards;
- an evaluation of teaching with depth;
- the result of independent evaluations from one or more external teams, including a Texas institution of higher education;
- recommendations for legislation;
- the effectiveness of various methods of digital learning, use of multiple assessments, and local control.

The bill also would add temporary provisions for a report to be submitted prior to the 85th Legislature.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2824 is the legislation that would enable the Texas High Performance Schools Consortium to carry out its R&D functions. The bill would give participating districts the ability to innovate and the flexibility to meet student needs.

The goal of the consortium is to experiment with alternative ways of teaching, testing, and accountability and report to state policymakers about practices that could be expanded to all public schools.

While there would be expenses associated with CSHB 2824, the Legislative Budget Board (LBB) estimates that any costs incurred would be offset by the revenue collected from participants. There are several foundations interested in furthering education innovation that are likely sources of financial support.

The fiscal note estimates a savings of $1.5 million based on administering fewer tests to students in consortium schools.

In-depth teaching. To transform teaching, the bill would allow consortium campuses to focus more time on the essential readiness standards of the state curriculum. Currently students also spend a great deal of time on supporting standards because they might be included on a STAAR exam. This has led to classroom lessons that some say are a mile

wide and an inch deep. By concentrating on readiness standards, teachers will have time to assign students projects that can result in long-lasting knowledge.

Targeted assessments. The bill would allow participant districts to experiment with alternatives to STAAR exams, including locally developed assessments and nationally recognized college prep exams. If approved by a federal waiver, districts also could experiment with reduced testing requirements. These provisions would allow schools to discover if reduced testing allows more classroom time for in-depth teaching and student projects.

R&D innovation. Allowing these 23 diverse school districts to experiment with in-depth teaching and targeted assessments is the best way to foster innovation. As changing technology drives education into the digital age, Texas must be ready to adopt different ways of instructing students and holding schools accountable. The consortium reports would guide lawmakers in determining the best way forward for all public schools.

OPPONENTS SAY:

CSHB 2824 could leave students attending consortium schools less prepared for college. The de-emphasis on supporting standards could result in students retaining less knowledge from grade to grade. The Texas curriculum is designed to be aligned from K-12 for college readiness.

Reducing testing requirements could mean that districts don't know how well their students are learning. The bill would eliminate elementary and middle school writing exams, leaving students less prepared for high school writing assignments.

It is unclear where the money would come from to cover the bill's costs. TEA could charge participating districts a fee and private funding is possible, but not guaranteed. The Legislative Budget Board estimates the costs of hiring nine employees at TEA to implement the bill's provisions at $900,000 in fiscal 2014 and $800,000 in subsequent years. The fiscal note states that TEA also would need more than $1 million to accelerate readiness standards, modify the reporting system, pay for an independent evaluation, and make other changes.

OTHER OPPONENTS

The school districts that make up the consortium obviously believe that students will learn more if there is less teaching to the STAAR exams and

SAY:

more time in class for projects and in-depth discussions. If these are good ideas, all districts in Texas should be allowed to try them rather than only 23 districts representing 5 percent of all public school students. While students in these districts could benefit from a better quality education, the bill leaves the vast majority of Texas students stuck in a system of high-stakes tests.

NOTES:

According to the fiscal note, CSHB 2824 would have a negative impact to general revenue of about $1.6 million in fiscal 2014-15.

SUBJECT: Requiring an appraisal review board to hold certain closed hearings

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, Ritter, Strama

1 nay — N. Gonzalez

2 absent — Eiland, Martinez Fischer

WITNESSES: For — Roland Altinger, Texas Association of Appraisal Districts; (*Registered, but did not testify:* George Allen, Texas Apartment Association; Sylvia Borunda Firth, City of El Paso; George Christian, Texas Taxpayers and Research Association; Marya Crigler, Texas Association of Appraisal Districts Legislative Committee, Travis Central Appraisal District; Liza Firmin, Chesapeake Energy; John Kennedy, Texas Taxpayers and Research Association; James LeBas, AECT, Texas Oil and Gas Association, Texas Chemical Council; Windy Nash, Texas Association of Appraisal Districts and Dallas Central Appraisal District; Craig Pardue, Dallas County; Jim Robinson, Texas Association of Appraisal Districts Legislative Committee; Brent South, Hunt County Appraisal District, Texas Association of Appraisal Districts)

Against — Rodrigo Carreon

DIGEST: HB 2792 would amend Tax Code, sec. 41.66, to require an appraisal review board that is hearing a protestation of a property value to close the hearing to the public if the property owner or the chief appraiser intends to disclose propriety or confidential information. A joint motion by the property owner and chief appraiser would be required to close the hearing.

The bill would take effect immediately if it receives two-thirds vote from each house. Otherwise, it would take effect on September 1, 2013.

SUPPORTERS SAY: HB 2792 would help eliminate unnecessary litigation stemming from property owners protesting their valuations with an appraisal district.

Closing some protest hearings to the public would allow appraisal review boards and property owners to effectively communicate the reasons and

issues at the heart of the protest. Often, those reasons focus on proprietary or confidential information that property owners are reluctant to share in public. The inability to close a hearing could prevent a protest from being resolved and prompt a property owner to file a lawsuit. Litigation is expensive for both the property owner and the taxpayer-funded appraisal review board.

The bill also would offer protection to businesses so that any disclosure about their property was not used against them by a competitor.

Several appraisal districts have said they are experiencing a growing concern for privacy by property owners.

OPPONENTS SAY:

Decisions made by local governments are best when they happen as much as possible in the open. CSHB 2792 would extinguish an important requirement that allows the public access to the proceedings of an appraisal review board hearing.

Understanding how a panel reaches its conclusions on property valuation protests is important information to a community. Taxpayers are able to compare their property's value to similar properties, and they also can monitor whether values set for commercial properties are fair. The bill would take away that critical component of protest hearings in an effort to reduce the number of lawsuits. It is doubtful that the number of lawsuits stemming from the requirement for open hearings has reached such a level as to require this change in the state's policy toward open government.

SUBJECT: Shifting collection of certain liquefied and compressed gas taxes to dealers

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer, Strama

0 nays

1 absent — Ritter

WITNESSES: For — Bill Cashmareck, Love's Travel Stops; Chip Haass, Chesapeake Energy; Sherrie Merrow, Encana; Reagan Noll, Clean energy fuels; (*Registered, but did not testify:* Adrian Acevedo, Anadarko Petroleum Corp; Mark Borskey, General Electric;Teddy Carter, Texas Independent Producers and Royalty Owners Association; George Christian, Texas Taxpayers and Research Association; Jim Dow, Pioneer Natural Resources; Les Findeisen, Texas Motor Transportation Association; Chris Hosek, Linn Energy; James LeBas, TxOGA; John R. Pitts, United Parcel Service; Mari Ruckel, Texas Oil and Gas Association; William Stevens, Texas Alliance of Energy Producers; Evan Taranta, Apache Corp; Julie Williams, Chevron USA, Inc.)

Against — None

On — Kirk Davenport, Comptroller of Public Accounts; James Terrell, Select Milk Producers, Inc.

BACKGROUND: The state imposes a tax of 15 cents per gallon on the use of liquefied gas (butane, propane, compressed natural gas) as a motor fuel. Motor vehicles licensed in Texas and equipped with a liquefied gas system are required to prepay the tax by purchasing a liquefied gas tax decal. Motor vehicles licensed in other states pay the tax at the retail pump to a licensed dealer.

DIGEST: CSHB 2148 would remove compressed natural gas (CNG) and liquefied natural gas (LNG) from the current regulatory framework governing "liquefied gas." The bill would add a new subchapter, Tax Code, ch. 162, subch. D-1, to govern the collection and administration of taxes for compressed natural gas and liquefied natural gas.

Administration. Under the new administrative framework, a tax of 15 cents per gasoline or diesel gallon equivalent (1.7 gallons, or 6.035 pounds of LNG) would be imposed on CNG and LNG that was delivered into the fuel tank of a motor vehicle. A CNG and LNG dealer would add the amount of the tax to the selling price to be paid by the purchaser. The dealer would be liable for collecting all CNG and LNG taxes. The dealer would provide an invoice or receipt that stated the rate and amount of tax added to the selling price.

Exemptions. The bill would grant exemptions to CNG and LNG that was delivered into the fuel supply tank of a motor vehicle operated by:

- the United States;
- a public school district;
- a commercial transportation company or a metropolitan rapid transit authority that provided public school transportation services to a school district;
- a volunteer fire department in this state;
- by a county in this state;
- a nonprofit electric cooperative corporation; or
- a nonprofit telephone cooperative corporation.

The bill also would exempt motor vehicles and other equipment that would not be used on public highways.

License. A person would have to hold an appropriate license from the comptroller in order to sell or dispense CNG or LNG. In addition, an interstate trucker's license would authorize a person who operated a truck and fueled with CNG or LNG to report and pay the tax and take a credit or claim a refund as provided. The bill would establish procedures for license applications and display. The comptroller would determine requirements for bonds and other securities for license holders.

The bill would impose a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000), as well as a civil penalty between $25 and $200 for delivering CNG or LNG without a license or failing to collect taxes from a non-exempt vehicle.

Payments and records. The bill would set up a process for dealers and interstate truckers to report and remit the amount of taxes due to the

comptroller, and to seek a refund or credit, if applicable. Specific records retention policies would apply.

Refund for certain metropolitan rapid transit authorities. The bill would authorize a refund for all CNG and LNG taxes paid by a metropolitan rapid transit authority operating under Transportation Code, ch. 451.

Allocation. After making deductions for refund purposes and for administration and enforcement, the comptroller would allocate the remainder of the taxes collected in the same way as existing gasoline taxes:

- one-fourth to be deposited to the Available School Fund; and
- three-fourths to be deposited to the State Highway Fund.

Effective date. The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2148 would remove barriers to the growing number of vehicles using CNG and LNG by changing tax collection practices, but not the taxes themselves.

There are a number of economic and environmental benefits to the state to increasing the number of vehicles using CNG and LNG. Under current law, these CNG and LNG-equipped vehicles must have a decal on their windshield to prove that they have paid their motor vehicle tax. This, in turn, necessitates certain technology and/or attendants that can monitor both the decal and the license plate of the vehicle. This current administrative apparatus is expensive and creates barriers to the market for compressed natural gas and liquefied natural gas stations and vehicles.

CSHB 2148 would simplify the administration of taxes for CNG and LNG-equipped vehicles by requiring collection at the dealer level so that customers pay upon refueling, as they do with gasoline and diesel. Changing current practices to resemble gasoline and diesel sales would remove many of the administrative hassles for the fewer than 10,000 CNG and LNG vehicles registered in Texas.

While there may be some initial costs and hassles for dealers, there is no reason to expect the bill would place an undue burden on dealers long-term. The requirements would be no more burdensome than those

governing gas stations, and the huge range of gas station attests to dealers of all scopes and sizes to comply with the licensing and bonding requirement. In addition, dealers already should have many of the processes in place because out-of-state vehicles are able to pay the taxes at the pump under current law.

CSHB 2148 also would make some technical changes to the measurement of pipeline natural gas to set a diesel-gallon equivalent. This change would reflect a minor modification to account for the removal of carbon dioxide and nitrogen content in the gas composition. The revised measurement would be consistent with standards that are being pursued by the natural gas vehicle industry nationally.

OPPONENTS SAY:

CSHB 2148 would transfer the burden of tax collection and administration from customers to dealers. This would create an added hassle for dealers, many of whom are very small-scale operations. The costs and additional bureaucracy may push some small-scale dealers out of business or at least prompt them to discontinue their CNG and LNG operations.

SUBJECT: Pilot program for summer instruction for certain students in grades K-8

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: For — Jason Sabo, Texas Education Grantmakers Advocacy Consortium; Grace Van Voorhis; Sandra West, Science Teachers Association of Texas; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Ellen Arnold, Texas Association of Goodwill Industries and Texas PTA; Portia Bosse, Texas State Teachers Association; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Andrew Erben, Texas Institute for Education Reform; Monty Exter, The Association of Texas Professional Educators; John Fitzpatrick; Skylar Hurst; David Maddox, Kids First; Mike Morath; Anne Roussos, League of Women Voters of Texas; Nelson Salinas, Texas Association of Business; Chandra Villanueva, Center for Public Policy Priorities)

Against — Zenobia Joseph; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)

On — Susan Dawson, E3 Alliance; Michael Marder; Sandy McLemore; (*Registered, but did not testify:* David Anderson, Texas Education Agency; Laura Koenig, E3 Alliance)

DIGEST: HB 742 would require the state commissioner of education to create a pilot program that would provide competitive grants to up to 10 economically disadvantaged school districts for summer instruction to students in prekindergarten through grade 8. The bill would include compensation for teachers in the program and would require reporting and evaluation to determine the effectiveness of the summer instruction. The commissioner of education would adopt rules as necessary to implement and administer the program beginning with the 2013-14 school year.

Eligibility and selection. To be eligible for the summer instruction grant program, more than half of a district's enrollment would have to be

educationally disadvantaged. Districts would be selected by the commissioner of education based on the most innovative ways they plan to achieve the following:

- encourage participation in the program by the most disadvantaged students;
- close the academic achievement gap;
- ensure that students in the program retain knowledge and skills from the school year;
- provide apprenticeship and mentorship for new teachers and student teachers; and
- add to the compensation of high-performing teachers by providing summer employment.

Grants. A district grant would be funded only with money appropriated for the program and any gifts, grants or donations made for the program. The education commissioner would determine the amount of each grant, which districts could use only for the summer program.

Reporting. A participating school district would be required to provide to the Texas Education Agency (TEA) an annual written report about the program, which would include its plan, details about the students in the program, test results for participants, and information on retention of participating teachers. TEA would submit the report by November 1 of each even-numbered year to the Legislature.

Evaluation: The bill would require TEA to hire a qualified third-party evaluator to measure the program's effectiveness and determine the cost in implementing statewide the best practices that improved student and teacher performance.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 742 would help close the achievement gap that develops every summer between low-income students and their wealthier peers in prekindergarten through grade 8. It also would provide a district’s best teachers with summer employment and a chance to mentor new and student teachers, helping retain them in the profession.

The results of the pilot program could become a model for improving student and teacher performance throughout the school year.

The bill would create a grant program to pay for summer instruction for up to 10 school districts with large numbers of students who were educationally disadvantaged. Selection of the participating districts would be competitive and hinge on their innovative ideas to tackle an alarming phenomenon that occurs each summer break.

Studies have shown that during the school year, students from different economic conditions progress at about the same rates. During the summer, however, economically disadvantaged students tend to regress while those who have more opportunities for enriching activities maintain their progress. This dynamic accounts for almost the entire school-age achievement gap that exists between the two cohorts.

The program would benefit students who were most in need of educational support and match them with the most effective teachers. Grant funding would provide summer compensation as a reward for educators who excelled in the classroom and taught in the program. The program would contain an apprenticeship component by having new teachers learn the best techniques and benefits of the profession from veteran educators.

The program's success would be measured thorough reporting by the participating districts and reviewed by a third-party evaluator. Data from the program could point the best way forward to improve student and teaching performance.

There is existing support for this type of program from foundations wanting to see new ideas unleashed in the classroom. Any costs of providing summer instruction could save the state money by helping students retain their knowledge over the summer, avoiding the time and expense of re-learning lessons in the fall.

OPPONENTS SAY:

HB 742 would create a program with unknown fiscal implications for the state, according to the Legislative Budget Board, because the bill does not specify a methodology for determining grant awards, and the number of districts that could qualify is too large to estimate the population that could potentially be served.

The bill could prompt future state appropriations if it became the standard

at all school districts and spread thin, already strained resources for Texas' public education system.

OTHER OPPONENTS SAY:

HB 742 would rely too heavily on a pool of new teachers to educate students who are at-risk and would be better served by more seasoned professional educators.

SUBJECT: Collecting information concerning inmates who have been in foster care

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Rose, J.D. Sheffield, Toth

0 nays

1 absent — Riddle

WITNESSES: For — Vivian Dorsett, Foster Care Alumni of America-Texas Chapter; Donald Lee, Texas Conference of Urban Counties; Benet Magnuson, Texas Criminal Justice Coalition; *(Registered, but did not testify:* Yannis Banks, Texas NAACP; Terri Burke, ACLU of Texas; Cindy Eigler, Texas Interfaith Center for Public Policy; Susan Milam, National Association of Social Workers/Texas Chapter; Lauren Rose, Texans Care For Children; Gyl Switzer, Mental Health America of Texas)

Against — None

On — Brandon Wood, Texas Commission on Jail Standards; *(Registered, but did not testify:* Bryan Collier, Texas Department of Criminal Justice; Kathryn Sibley, Department of Family and Protective Services)

BACKGROUND: The Texas Department of Criminal Justice does not currently inquire about past foster care system involvement during its inmate intake process.

DIGEST: CSHB 2719 would require the Texas Department of Criminal Justice to inquire into past foster care system involvement during inmate intake and report the total number of inmates who had at any time been in foster care.

The bill would take effect September 1, 2013.

SUBJECT: Tax credits in exchange for investments in certain communities

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 9 ayes — J. Davis, Vo, Bell, Y. Davis, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

WITNESSES: For — Kathy Barber, NFIB Texas; Craig Casselberry, Texas Coalition for Capital; Ben Dupuy, Stonehenge Capital Co.; Carlton Schwab, Texas Economic Development Council; (*Registered, but did not testify*: Danielle Delgadillo, Advantage Capital Partners; Jon Fisher, Associated Builders and Contractors of Texas; Jim Grace, Centerpoint Energy; Bill Hammond, Texas Association of Business; Tom Kowalski, Texas Healthcare and Bioscience Institute; Donald Lee, Texas Conference of Urban Counties; Stephanie Simpson, Texas Association of Manufacturers)

Against — Dick Lavine, Center for Public Policy Priorities

On — Mark Foster

DIGEST: CSHB 2061 would amend the Insurance Code to create a New Markets Program operated by the state.

Program specifics. A community development entity created to invest in low-income communities would apply to the program to make an investment. Investors, typically insurance companies, would earn credits that could be used against their state premium tax liability related to insurance premiums, such as property and casualty insurance premiums.

The comptroller would have to adopt rules to assist with its administering the program. In certifying proposed investments, the comptroller would be required to limit the total investments to $750 million.

The bill would use the same definitions found in the federal New Markets Program. The federal definition for a qualified active low-income community business would be used, but this definition would not include

real estate companies. The federal definition for a qualified community development entity would also be used.

In certain situations, the comptroller would have to recapture a tax credit given to a qualified investor, such as if the community development entity failed to utilize the full investment for a low-income community investment within one year. Failure of the community development entity to meet program requirements, such as making the qualified investment within one year, would also result in loss of the $500,000 deposit made with the comptroller under the program.

The amount of a tax credit claimed by a qualified investor could not exceed the total state tax liability of the investor for the same year. Tax credits claimed under the program could not be refunded or sold to another party.

Reporting. Community development entities would have to submit annual reports to the comptroller demonstrating compliance that the entity maintained the full investment amount authorized under the program in low-income community investments.

Every biennium, the comptroller would have to report to the Legislature information on the amounts of qualified investments, the performance of community development entities, as well as information on the resulting jobs and wages. This report would be filed with the governor, lieutenant governor, and speaker of the House on even-numbered years.

The bill would take effect September 1, 2013. The comptroller would be required to begin accepting applications for qualified investments no later than October 2, 2013.

SUPPORTERS SAY:

In 2000, the U.S. Congress created the New Markets Program to spur new and increased investments into low-income communities. Early growth-stage capital has long been an obstacle for small businesses, especially in low-income areas. The program is designed to attract investments by providing tax credits in exchange for entities making investments in special financial institutions called community development entities.

By creating a New Markets Program at the state level, CSHB 2061 would encourage private-sector capital investment in economically distressed rural and emerging urban markets throughout Texas by granting investors

a tax credit on the state insurance premium taxes beginning in the third year after investment. These funds would be invested by private sector firms in these specific markets.

While the bill would result in a significant fiscal impact in the future, it would result in significant benefits as well. It is estimated the program in Texas would create 14,400 jobs and attract $1.2 billion in investment, which would result in $448 million of new state revenue. For every one dollar of tax credit used, $1.40 in new state revenue would be generated.

Another important consideration is that it could help Texas attract federal dollars to support its goals of investing in low-income communities. Texas ranks 43rd in per-capita investment that qualifies for the federal New Markets Program. If a state operates a new markets program at the state level, it can draw federal dollars. Federal money generally flows to those states that have initiated their own programs.

Under the bill, the comptroller would administer the state's new markets program with up to $750 million in investments, money that could be leveraged by an additional $465 million from the federal new markets program. The corresponding tax credits would be paid out over seven years, while there would be no tax credits during the first two years.

The bill would protect the state's interest. It would provide for a seven-year credit-recapture or “clawback” provision to recoup money if a participant violated program rules. Additionally, investments would have to be made within one year or authority would revert back to the state to retain a $500,000 deposit and reallocate the investment elsewhere. If a community development entity complied with program rules, the $500,000 would ultimately be returned. The amount of tax credits that could be claimed would be capped at the investor's existing tax liability, so there would be no over-claiming. Also, unlike other state programs, tax credits would not be refundable or transferable.

The committee substitute would clarify that this would not be a perpetual program. It has a built-in sunset of seven years. Also, community development entities would have to meet annual reporting requirements. The comptroller would report to the Legislature each biennium.

Maryland's new markets program, InvestMaryland, has underperformed in terms of providing investments for small businesses. The Texas program

would employ a better model resulting in $750 million being invested into Texas small businesses within one year. It should be noted, as well, that the bill would place the investment risk on private companies. The state would not be the provider of funds and would not have to bear the risk.

OPPONENTS SAY:

While the bill would temporarily authorize this tax expenditure program, there is a better way to accomplish the bill's objectives. Maryland's new markets program involves the state auctioning off premium tax credits. This more open and competitive program has resulted in an 18 percent tax discount, whereas this bill would result in a much higher discount.

Texas would only receive an indirect benefit from the program in the form of jobs. The bill should allow the state to directly participate in the investment returns under the program. Additionally, the $500,000 deposit required of investors is an unnecessary burden to potential investors, which is not found in the federal program.

The fiscal note shows no immediate impact. However, the cost to the state would eventually increase to $120 million per biennium.

NOTES:

The Legislative Budget Board fiscal note states that there would be no significant fiscal impact to the state during fiscal 2014-15. However, CSHB 2061 would result in up to $292.5 million in insurance tax premium credits taken during a five-year period beginning in fiscal 2016.

SUBJECT: Creating a class B misdemeanor for voyeurism

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Carter, Burnam, Canales, Hughes, Schaefer

0 nays

3 absent — Leach, Moody, Toth

WITNESSES: For — James Babb, Texas Municipal Police Association; (*Registered, but did not testify*: Justin Bragiel, Texas Hotel & Lodging Association; Victoria Camp, Texas Association Against Sexual Assault; Lon Craft, Texas Municipal Police Association; Frederick Frazier, Dallas Police Association; David Mintz, Texas Apartment Association; Dan Powers, Children's Advocacy Center of Collin County)

Against — (*Registered, but did not testify*: Bill Shier; Ken Stanford II)

BACKGROUND: Under Penal Code sec. 42.01 it is a class C misdemeanor (maximum fine of $500) under the offense of disorderly conduct if a person intentionally or knowingly, for a lewd or unlawful purpose:

- enters the property of another and looks into a dwelling on the property through a window or other opening;
- while on the premises of a hotel or similar establishment looks into another's guest room through a window or other opening; or
- while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room designed to provide privacy.

DIGEST: HB 2371 would create the criminal offense of voyeurism. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to, with intent to arouse or gratify the sexual desire of anyone, observe another person without the person's consent by looking in a:

- window or other opening in a house on private property while on the property's premises or with binoculars, a telescope, or similar

device while legally on a premise; or

- a guest room of a hotel or other similar facility, other than a room in which the person was legally authorized to be, while on the premises of the hotel.

It also would be an offense to, with the same intent, look into an area designed to provide privacy to another person using the area, such as a restroom, shower stall, changing or dressing room while on the premises of a public place.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2371 is needed to address the specific act of voyeurism when it has a sexual component. Currently, voyeurism falls under disorderly conduct and is punished as a class C misdemeanor. Sometimes information about this lowest level of misdemeanors is not consistently shared across the state, making it difficult to track offenders. In addition, even if the information is available, it can be recorded only as "disorderly conduct," which veils the real nature of the offense when it has a sexual component. This is problematic because there is strong evidence that voyeurism is one way that that some sex offenders begin their offense history.

HB 2371 would create a separate offense for voyeurism when done in a sexual context. This would allow the offense to be tracked and offenders to be identified. Offenders could be put on probation and supervised by probation officers, which could reduce reoffending. The bill would properly punish voyeurism as a class B misdemeanor, consistent with indecent exposure, and one step below improper photography or visual recording, which is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

Rather than foster confusion, HB 2371 would allow for voyeurism cases to be handled more appropriately than under current law. HB 2371 would capture those cases in which voyeurism had a sexual nature by requiring the offense to be done with the intent to arouse or gratify the sexual desire of any person. The current disorderly conduct offense could be used for other instances that did not involve this sexual intent, such as a teenager peeping in a window to spy on someone. There are numerous instances in the Penal Code in which certain behavior can fall under different offenses, and these are handled without problem.

OPPONENTS SAY:

HB 2371 is unnecessary because current law provides an appropriate penalty for voyeurism. These crimes are punished as class C misdemeanors along with other crimes of the same seriousness, rather than the class B misdemeanor that HB 2371 would impose.

HB 2371 would cause confusion because it would overlap with the current crime under disorderly conduct for the same type of actions. It could raise questions about which section should be used to prosecute in a case and could lead to defendants raising issues about whether they were prosecuted under the proper offense. Having two different offenses for a similar type of crime could make it difficult to track offenders.

It is unnecessary to create a new offense to track voyeurism. Current records for disorderly conduct often note the type of conduct or section of the code that covers an individual case.

OTHER OPPONENTS SAY:

Rather than create a new penalty, a better approach would be to raise the penalty for the subsection of disorderly conduct that describes voyeurism.